RECENT IMPORTANT DECISIONS.

ADVERSE POSSESSION—ACQUISITION OF RIGHTS BY PRESCRIPTION—RAILROAD RIGHT OF WAY.—Defendant company was compelled by statute to discontinue all grade crossings in the city of Philadelphia, and as a result elevated its railway, in doing which it was found necessary to use its entire right of way. Plaintiff had constructed a brick building, one corner of which extended over this right of way. Defendant removed this corner and plaintiff brought trespass, claiming title to the land on which her building was situated, on the grounds of continued adverse possession for more than 21 years. *Held,* that the right of way was not subject to loss by adverse possession, and plaintiff had acquired no interest therein. *Conwell* v. *Phil. & R. R. Co.* (Penn. 1913), 88 Atl. 417.

The court based its decision on the ground that the right of way becomes impressed with a public use as soon as acquired, and is held in trust for the public. Probably the weight of authority is to the effect that such railroad rights of way may be taken by adverse possession, except that some cases make a distinction between rights of way acquired by eminent domain or by purchase and those acquired by public grant, there being more reason for calling the latter a public trust than the others. In accord with the principal case are, *Southern P. R. Co.* v. *Hyatt,* 132 Cal. 240, 54 L. R. A. 522; *McLucas* v. *St. Joseph & G. I. R. Co.,* 67 Neb. 603, 93 N. W. 928; *Reading Co.* v. *Seip,* 30 Pa. Super Ct. 330; *Carolina Cent. R. Co.* v. *McCaskill,* 94 N. C. 746. *Contra, Northern Pac. R. Co.* v. *Ely,* 25 Wash. 384, 65 Pac. 505; *Donohue* v. *Ill. Cent. R. Co.,* 165 Ill. 640, 46 N. E. 714; *Pittsburg, etc. R. Co.* v. *Stickley,* 155 Ind. 312, 58 N. E. 192; *Pollock* v. *Maysville, etc., R. Co.,* 103 Ky. 84, 44 S. W. 359; *Paxson* v. *Yazoo, etc. R. Co.,* 76 Miss. 536, 24 So. 536; *Alexander-City Union Warehouse & Storage Co.* v. *Cent. of Ga. R. Co.* (Ala. 1913), 62 So. 745. Some courts, while professing to follow the rule that title in a railroad right of way can be acquired by prescription, have evaded it to a certain extent by holding that mere usage for agricultural purposes and the like was not adverse so long as the land was not needed for actual occupancy by the railroad company. *Va. & S. W. R. Co.* v. *Crow,* 108 Tenn. 17; *Northern Counties Invest. Trust* v. *Enyard,* 24 Wash. 366. The question has also been settled by statute in some states. *Littlefield* v. *Boston & A. R. Co.,* 146 Mass. 268; *Costello* v. *Grand Trunk R. Co.,* 70 N. H. 403; *Drouin* v. *Boston & M. R. Co.,* 74 Vt. 343, 52 Atl. 957.

BILL AND NOTES—CORPORATION'S LIABILITY FOR DRAFT EXECUTED BY PRESIDENT.—Where a draft was signed by one describing himself as "President" without further reference to a principal, but at the time of the transaction the true obligor was known and was intended by both parties to be bound, *Held,* parol evidence is admissible, in an action by the payee, to show who the principal was and that he was the real obligor. *Ocilla Southern R. Co.* v. *Morton* (Ga. App. 1913), 79 S. E. 480.

The general rule as to contracts other than negotiable instruments is that the true principal may be shown by parol: *New Jersey Steam Navigation Co.* v. *Merchants Bank,* 6 How. 381; *Huntington* v. *Knox,* 7 Cush. 371. But a stricter rule springing from the law merchant is applied to negotiable instruments, to the effect that, where one signs as "Agent," or "President" and the like, without sufficiently indicating on the instrument who the principal is, parol evidence is not admissible to charge the principal, though the party actually signing be an agent. This rule is founded on the reason that "each party who takes a negotiable instrument makes his contract with the parties who appear on its face to be bound for its payment. It is a courier without luggage, and its countenance is its passport." DANIEL, NEG. INSTR., § 303; CLARK & SKYLES, AGENCY, § 328a; *Anderson* v. *Pearce,* 36 Ark. 293; *Richmond etc.* v. *Morangue,* 119 Ala. 80; *Stinson* v. *Lee,* 68 Miss. 113; *Conner* v. *Clark,* 12 Cal. 167; *Bedell* v. *Scarlett,* 75 Ga. 56; *Prescott* v. *Hixon,* 22 Ind. App. 139; *Brown* v. *Parker,* 7 Allen (Mass.), 337; *Rendell* v. *Harriman,* 75 Me. 497; *Keokuk etc. Co.* v. *Kingsland etc. Co.,* 5 Okla. 32; *Tarver* v. *Garlington,* 27 S. C. 107; *Arnold* v. *Sprague,* 34 Vt. 402. The instant case bases its decision on an exception to the principle established by the law merchant, that as between the immediate parties to a bill or note, it may be shown by parol that the instrument was, to the knowledge of the parties, intended to be the obligation of the principal, and not of the agent, and that it was given and accepted as such. *Bank of Genesee* v. *Patchin Bank,* 19 N. Y. 312; *Metcalf* v. *Williams,* 104 U. S. 93; *Kline* v. *Bank of Tescott,* 50 Kan. 91; *McClellan* v. *Reynolds,* 49 Mo. 312; *Roberts* v. *Austin,* 5 Whart. (Pa.) 313; *Traynham* v. *Jackson,* 15 Tex. 170; *Kiedan* v. *Winegar,* 95 Mich. 430; *Megowan* v. *Peterson,* 173 N. Y. 1. Other courts deny the admissibility of parol testimony even in such cases. *Daniel* v. *Buttner,* (Wash.) 80 Pac. 811; *Tucker Mfg. Co.* v. *Fairbanks et al.,* 98 Mass. 101; *Sturdivant* v. *Hull,* 59 Me. 172; *Hobson* v. *Fassett,* 76 Cal. 203; *Tannatt* v. *Rocky Mountain Nat. Bank,* 1 Colo. 278; *Cahokio School Trustees* v. *Ratenberg,* 88 Ill. 219.

BILLS AND NOTES—CONDITIONAL DELIVERY TO PAYEE.—The maker of a note delivered it to the payee to take effect when a third party should give to the maker a warranty deed to a certain tract of land. In a suit on the note, brought by the payee, *Held,* parol evidence is admissible to show a conditional delivery or delivery in escrow to the payee, which prevents it from becoming a complete contract in praesenti, where there is a failure to perform or comply with such condition. *Jones* v. *Citizens State Bank,* (Okla. 1913), 135 Pac. 373.

The instant case accords with the provisions of the Negotiable Instruments Law as it has been enacted in the majority of states, *i. e.*: "As between immediate parties and as regards a remote party other than a holder in due course, . . . the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument." Negotiable Instruments Law, § 18. But apart from such statutes the decisions are not uniform on the question of giving evidence of a conditional delivery to the payee. The weight of authority